

upholding this contention. Future earnings of salary are on a very different basis, and I can find no case in which an order such as that for which the petitioner asks was made in respect of them. Equitable execution will not be granted in a case in which the Court of Chancery would not have given such relief before the Judicature Acts. In *Holmes v. Millage* (3) where an application was made for the appointment of a receiver of a debtor's salary, the order was refused and the principle stated above was clearly laid down by the Court of Appeal.

In my opinion this is not a case in which an injunction could be granted to restrain the respondent from receiving future payments of salary; and even if it could be granted, the court could not, as noted above, order the Treasurer to pay over the money.

In *Burrowes v. Burrowes* (1), although the wife's application in the court below failed and although it was alleged that she had separate estate, Hill, J. ruled that as the husband had brought the proceedings upon himself by his persistent refusal to make the monthly payments of alimony, he must pay the costs.

I order that the respondent pay the costs of this application.

Application dismissed.

MACAULEY v. PARAMOUNT CHIEF MEEMA

Circuit Court (Tew, C.J.): May 10th, 1932

[1] Civil Procedure — parties — defendants — action for recovery of possession of land — person in control but not in actual possession of property may be defendant: An action for the recovery of possession of land may be brought against a person who is not in actual possession of it, when he has control of the property and the capacity to return it to its rightful owner (page 311, line 38—page 312, line 10).

[2] Contract — formation — terms — contract void if parties clearly negotiated in contemplation of diverse terms: If the parties to a purported contract clearly negotiated in contemplation of diverse terms the contract is void and cannot therefore be the subject of a claim for damages for breach of contract (page 311, lines 7—20).

[3] Contract — uncertainty — effect — no concluded contract: See [2] above.

[4] Courts — native courts — jurisdiction — son of unmarried non-native and native woman, living in Protectorate but acting and treated as non-native is non-native — not subject to native court jurisdiction: The son of a non-native and a Temne woman to whom his father was not married,

who lives in the Protectorate but has always acted, and been treated, as a non-native, paying settlers' fees and taking a lease of land under the Protectorate Land Ordinance, 1927, is a non-native and therefore is not subject to the jurisdiction of a native court (page 309, line 40—page 310, line 13).

- [5] Jurisprudence — personal status — non-natives — son of unmarried non-native and native woman, living in Protectorate but acting and treated as non-native is non-native — not subject to native court jurisdiction: See [4] above. 5
- [6] Land Law — recovery of possession — defendants — person in control but not in actual possession of property may be defendant: See [1] above. 10
- [7] Tort — damages — measure of damages — trespass to land — value of land irrelevant to assessment — extent of inconvenience and interference with plaintiff's rights factors to be considered: The measure of damages for trespass to land is unaffected by the value of the land involved, the relevant factors being the extent of the interference with the plaintiff's rights and the inconveniences suffered by him (page 312, lines 20—28). 15
- [8] Tort — trespass — trespass to land — damages — value of land irrelevant to assessment — extent of inconvenience and interference with plaintiff's rights factors to be considered: See [7] above.

The plaintiff brought an action against the defendant for damages for breach of contract, recovery of possession of certain land and damages for trespass. 20

The defendant was Paramount Chief of the Dasse Chiefdom of the Moyamba District. The plaintiff was the son of a non-native and a Temne woman; he had lived in Mano for many years and had always been treated as a non-native. He paid settlers' fees and on the coming into operation of the Protectorate Land Ordinance, 1927, he took a lease of land which he had been occupying, at a rent of one guinea a year. 25

In 1930 the defendant decided to rebuild Mano to a better plan. This necessitated the demolition of the plaintiff's house and its re-erection in a different position on his land. The plaintiff agreed to this, believing that his new house would be similar to the one demolished, that it would be built at no cost to himself and that it would be completed very quickly. In fact, in accordance with the defendant's view of the contract, the house was rebuilt on a smaller scale with fewer facilities, the plaintiff was required to contribute to the cost of it and it was not ready when he expected it to be. 30 35

The defendant also appropriated an additional area of the plaintiff's land, without his consent, for part of a road and a house which when complete he let to the wife of a former chief. The loss 40

of this land deprived the plaintiff of the opportunity of adding out-buildings to his new house and the proximity of the new road interfered seriously with his privacy.

5 The plaintiff brought the present proceedings against the defendant for damages for breach of contract, recovery of possession of his land and damages for trespass. The defendant raised a preliminary objection that the plaintiff, being the son of a non-native and a Temne woman to whom his father was not married, took the personal status of his mother and should therefore have brought this action in the native court. In reply the plaintiff contended that as he had always been accepted as a non-native he could not now be treated as a native. The defendant's objection was over-ruled.

15 On the issue of the alleged breach of contract the court considered whether the parties had in fact made a valid contract concerning the demolition and rebuilding of the plaintiff's house, in the light of their conflicting accounts of its purported terms.

20 In respect of his claim for the recovery of possession of his land the plaintiff contended that the defendant had wrongfully dispossessed him of it and that although the defendant was not in actual possession he effectively had control over the property and should be ordered to restore it to the plaintiff. He also contended that he was entitled to recover damages for the inconvenience suffered as a result of the defendant's action, though the defendant contended that the level of any damages should be assessed with reference to the value of the land.

The court dismissed the plaintiff's claim for damages for breach of contract but gave judgment in his favour on the other claims.

30 *Beoku-Betts* for the plaintiff;
C.E. Wright for the defendant.

TEW, J.:

35 The plaintiff is a settler at Mano in the Dasse Chiefdom of the Moyamba District, and the defendant is the Paramount Chief of that Chiefdom. The plaintiff in October 1929, took a lease of a piece of land at Mano from the Tribal Authority, *i.e.* the Paramount Chief and the principal chiefs under him. The lease was for 15 years with the option of renewal for a further term of seven years.

40 In 1930 a fire destroyed part of Mano town and the defendant was anxious to rebuild it on a better plan. The plaintiff's house

interfered with the proposed new alignment, and the defendant asked him to allow it to be pulled down and re-erected. The plaintiff consented, and the work of demolition and re-erection was carried out. The result is that the plaintiff has lost about two-thirds of the land belonging to him, and his house, which formerly stood in a compound, is bounded by a street on every side. 5

The plaintiff therefore claims the following:

(a) £200 damages for breach of contract in that the defendant represented to the plaintiff that if the plaintiff would give up temporary occupation of his land and buildings situate at Mano aforesaid, he the defendant would within six weeks pull down and rebuild the said building in conformity with a scheme for beautifying the town at no cost to the plaintiff. On this representation the plaintiff at great inconvenience evacuated, but the defendant failed to fully perform his part of the contract by means of which the plaintiff has suffered injury and claims £200. 10 15

(b) Damages for breach of contract of an indenture of lease numbered, 511/8638/29 and dated December 14th, 1929 for a piece of land situate lying and being at Mano in the Moyamba District of the Protectorate of Sierra Leone bounded on the East by the Konjo Road 65 ft., on the West by Wharf Road 63 ft., on the North 47 ft., on the South 40 ft. in that the defendant by himself and workmen have interfered with the plaintiff's possession of the land and dispossessed him of a portion thereof: £100. 20 25

(c) Recovery of possession of the portion of land of which the plaintiff has been wrongly dispossessed.

(d) A declaration that plaintiff is entitled to the undisturbed possession of the whole area of land comprised in the said lease numbered 511/8638/29 of December 14th, 1929 for the unexpired period contained in the said lease. 30

(e) Such other damages, compensation and relief as the nature of the case may require.

Mr. Wright, for the defendant, argued that, as the lease was granted by the Tribal Authority, the Paramount Chief could not be sued by himself under the second and fourth claims at least. This objection was upheld, and Mr. Beoku-Betts for the plaintiff agreed that these claims should be struck out. 35

In the course of the plaintiff's evidence Mr. Wright submitted that he had been proved to be a native, and that he therefore 40

could not sue a native in this court, but must have recourse to the native court. He argued that the plaintiff being the son of a non-native and a Temne woman to whom his father was not married, took the nationality of his mother. This contention I over-ruled.

5 I will only add that, in my opinion, this point should not have been taken. The plaintiff had resided in Mano for about 35 years and had always been treated as a non-native. He had paid settlers' fees for a long time, and on the coming into operation of the Protectorate Land Ordinance, 1927 had taken a lease of the land

10 which he had been occupying. The defendant was content to treat the plaintiff as a non-native when it suited him to do so; this attempt to force him into a native court is much to be deprecated.

The first question is what was the contract, if any, between the parties as to the demolition and rebuilding of the plaintiff's house?

15 According to the plaintiff, the defendant agreed to rebuild the house entirely at his own expense and without depriving the plaintiff of even a foot of his land. There is an averment in the claim that the new house was to be built in six weeks. The negotiations between the parties took place in the height of the wet

20 season, when mud houses cannot be built quickly and are not fit for occupation after being built so soon as they would be in dry weather. A reasonable time must have been intended, and the evidence does not satisfy me that any specific time was

25 mentioned.

The defendant provided the plaintiff with a temporary dwelling-house, or rather, part of one, and the plaintiff complains that this house was unsuitable, and that he and his family suffered in health thereby, and he claims damages on this account as part of the breach of contract. He further alleges that the new house built for

30 him had less accommodation and fewer conveniences, whereas the arrangement had been for a house of the same size, and that he had been obliged to have the woodwork of the house replaced at his own expense.

The defendant maintains that he had made it clear to the plaintiff that he wished the new house to be in line with others

35 and that some of his land would have to be taken for that purpose. He says that, according to the local custom, when a house is rebuilt by a chief, the owner is obliged to have the woodwork put in at his own expense, but that he did in fact offer a small sum to

40 the plaintiff towards the cost of the work. He adds that the

plaintiff knew the exact site and dimensions of the new house, as they had pegged out the site together. As to the latrine and wash-house which admittedly formed part of the old house, the defendant says that he told the plaintiff that such conveniences would not be provided in the new house, but that public latrines and a wash-house would be erected at the end of each road. 5

After considering all the evidence as to these negotiations, I have come to the conclusion that the parties were negotiating in contemplation of diverse terms, and that there was consequently no contract at all: see 7 *Halsbury's Laws of England*, 1st ed., at 354, para. 732 (1909). The defendant was embarking on a large scheme of town housing and new streets and it cannot be supposed that his intention was merely to rebuild the plaintiff's house on the same site. That the plaintiff apprehended the intentions of the defendant in their entirety, I do not believe. He may, I think, have realised that he might lose part of his land on one side of his house but there is no certainty even as to this. He may merely have thought that the house would be built in a different spot on his compound. The plaintiff's claim for damages for breach of contract therefore fails. 10 15 20

The result is different when we turn to the claim for recovery of possession and for damages. The plan put in evidence reveals a startling state of affairs. On the South side of the plaintiff's present house, he has lost a very large part of the land leased to him. Part of this land is taken up by a public road and the rest by part of a dwelling house built by the defendant and occupied by a woman named Lucy. It is evident that the defendant's zeal for town-planning, laudable in itself, has led him to interfere grievously with the plaintiff's rights. That he should have taken strips of the plaintiff's land on the East and West sides, seems to be quite reasonable. The loss of those strips should have been contemplated by the plaintiff, even if it was not, as otherwise it would have been impossible to bring his house into line with others and to make the street of a uniform width. There could, however, be no justification for the appropriation of a large piece of land on the South, except with the plaintiff's consent, and he could not have been expected to give it. 25 30 35

Mr. Wright argued that the plaintiff cannot recover possession of this part of the land because he has not sued the person actually in possession. The road, he says, is either dedicated to the public or is in the possession of the Tribal Authority, and the dwelling- 40

house is in the possession of the woman, Lucy. As to the road it was clearly made by the defendant's orders. He took possession of the land that he required for that purpose, and undoubtedly he can restore possession to the plaintiff. The violation of a person's rights cannot be supported by quibbles. The dwelling-house is certainly occupied by Lucy, but only as the tenant of the defendant. Lucy is the wife of a former chief and was provided by the defendant with this house which he built for her. There seems to be no doubt that, if he chose he could take it away from her again. The plaintiff is entitled to recover possession of that area, which I have caused to be hatched in yellow on the plan, formed by prolonging southwards the eastern boundary of his present house until it meets the southern boundary of the land leased to him, thence following the southern boundary of the said land in a westerly direction for a distance of 31 ft. more or less to the point marked "C" on the plan at the south-eastern corner of the land leased, and thence in a northerly direction along the western sides of Lucy's and the plaintiff's house to the northern boundary of the said land. There will be an order accordingly.

The plaintiff is also entitled to damages for interference with his rights over the above-mentioned portion of his land. It is not easy to estimate the amount of the damages. He has been deprived of this land for about 18 months, and has of course suffered inconvenience from having streets running close up to his house on every side, leaving him no space for the erection of out-buildings and interfering seriously with his privacy. The value of the land, for which he pays a rent of only one guinea a year, does not affect the measure of damages.

I assess the damages at £50. The plaintiff will have the costs of these issues on which he has succeeded.

Order accordingly.